

THE STATE OF NEW HAMPSHIRE
SUPREME COURT
COMMITTEE ON JUDICIAL CONDUCT



ANNUAL REPORT

2004

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Judicial Conduct Committee

Annual Report

2004

Committee Status

As the result of an amendment to RSA Chapter 494-A, which became effective on January 1, 2004 the Committee no longer had authority to accept and process grievances.

The Committee met in January and March to resolve outstanding grievances from 2003, but any new submissions were forwarded to the Judicial Conduct Commission.

On June 14, 2004 the New Hampshire Supreme Court issued a decision on the petition filed by the Committee in 2003 to determine the constitutionality of RSA Chapter 494-A. The Court ruled that the statute amounted to an infringement on the Court's authority to discipline judges and court employees. The provisions of the statute that allowed legislative supervision of the judges short of the existing authority of impeachment were determined to be in violation of the separation of powers requirement of the New Hampshire Constitution.

The Commission accepted this ruling and all of the closed and pending files were delivered to the Committee office.

The Committee began accepting new submissions following the Court's decree and resumed regular monthly meetings in July.

Fifty-one grievances were docketed after that time, being a combination of new files and pending Commission files. (The separate list of closed 2004 Commission files is attached as an Appendix.)

Supreme Court

There were no grievances filed involving the Supreme Court.

Superior Court

There were 26 grievances filed: 16 related to judges, 8 involving marital masters, 2 involving a clerk's office.

District Court

There were 17 grievances involving judges, and two against clerk's offices.

Family Court

There were eight grievances against judges.

Probate Court

There was one grievance related to a judge.

(Note: the total grievances are higher than the number of docketed cases because a single grievance may have involved more than one individual.)

Disposition

The matters that were outstanding at the start of the year were resolved. One matter (JC-03-055) resulted in a cautionary letter being forwarded to the judge.

Of the new grievances:

One involving two judges of the Family Court was dismissed upon the Complainant's failure to respond to the Committee with supporting documentation.

Two grievances, one involving a superior court judge and the other a district court judge, were dismissed when the Committee learned they had previously been reviewed and decided by the Commission.

Two grievances were dismissed as being beyond the Committee's two-year statute of limitations.

All other matters were disposed of as follows:

Dismissed on a finding of no judicial misconduct	27
Dismissed on the basis that the grievance related solely to the rulings and was a substitute for an appeal	7
Dismissed on the grounds of no credible evidence to support a finding	1
Dismissed since no individual was named	1

The Committee requested and received responses on 11 of the matters reviewed. The Executive Secretary reviewed either the court file or a recording/transcript of the hearing in question in 25 of the 46 grievances considered on the merits.

Even though the case was dismissed there was a letter of caution sent to a district court judge. A notice of informal hearing was issued to two district court judges (and scheduled in early 2005). Finally, the Committee issued formal charges against a district court judge alleging three violations of the Code of Judicial Conduct. A public hearing on these charges was scheduled for early January 2005.

Subject Matter

As in previous years, the majority of the grievances expressed dissatisfaction with the outcome of the case but with more emphasis on claims that the judge/marital master exhibited bias by ignoring evidence or ruling contrary to the evidence, particularly with regard to domestic cases. There were at least two cases where racial bias was alleged.

There were several instances of claimed conflicts involving the actions of part-time judges.

The grievances involving the clerks' offices alleged failure to respond to requests for file documents in a timely manner.

One grievance which resulted in an informal meeting with the judge and which is still under consideration, involved an issue of demeanor and denial of full hearing.

Finally, the grievance which resulted in formal charges being brought involved allegation of five incidents of inappropriate sexual contact at a public conference. The judge in question was convicted of five counts of simple assault in September. The Committee hired outside counsel and the charges were filed in November. This matter remained open at the end of the year.

Members of the Committee

Alfred Catalfo, III (Attorney), Dover

Raymond Cloutier (Probate Court representative), Manchester

Patricia Coffey (Superior Court representative), Rye

Harland Eaton (public member), Auburn

Douglas Hatfield, Chair (District Court representative), Hillsborough

Elizabeth Lown (public member), Amherst

Lawrence O'Connell (public member), Durham

Jay Rosenfield (public member), New London

Wilfred L. Sanders, Jr. (Attorney), Portsmouth

Robert Wilson, Vice Chair (public member), Hopkinton

Dana Zucker (Court Clerk representative), Laconia

It is with great sadness that the Committee mourns the passing of our member, Deborah Cooper. She was a gifted lawyer, a wise and thoughtful colleague, and an extraordinary human being.

Respectfully submitted,

Executive Secretary

Appendix A

A review of the Commission files which were turned over to the Committee following the New Hampshire Supreme Court decision on June 14, 2004, shows the following:

There were 42 grievances received by the Commission as of June 2, 2004. Nine of these remained unresolved and were eventually reviewed and disposed of by the Committee.

Of the 33 cases handled solely by the Commission the breakdown is as follows:

Supreme Court Judges	11
Superior Court Judges	11
Marital Masters	3
District Court Judges	8
Family Court Judges	8
Probate Court Judges	1
Superior Court Clerks	3
District Court Clerks	1

It appears from the record that all of the grievances were dismissed, with the exception of one informal disposition involving a Family Court judge where the Commission found a violation of the Code with regard to that judge's initiation of an ex parte communication with an individual who had not been called as a witness but who was alleged to have relevant information regarding testimony given at the time of hearing.